

DATE: January 25, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 04-03795

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Sabrina E. Redd, Esq., Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 26, 2005, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision--security concerns raised under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested the case be decided on the written record. On May 31, 2006, after considering the record, Administrative Judge Roger C. Wesley denied Applicant's request for a security clearance. Applicant submitted a timely appeal pursuant to Directive E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: that the Administrative Judge's decision, in its final paragraph, states "[c]learance is granted," thereby implying a decision in Applicant's favor; that the Administrative Judge's finding that Applicant's alcohol use, which began in the early 1980s, escalated to consumption of "no less than a 6-pack a day" over a 10 year period is not supported by record evidence; and that the Administrative Judge's finding that Applicant had used cocaine and LSD is not supported by record evidence. Finding no harmful error, we affirm.

The Appeal Board's review of the Administrative Judge's findings of fact is limited to determining if they are supported by substantial evidence--such relevant evidence as a reasonable mind might accept as adequate to support such a conclusion in light of all the contrary evidence in the record." Directive ¶ E3.1.32.1. "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." *Consolo v. Federal Arbitration Comm'n*, 383 U.S. 607, 620-21(1966)). In evaluating the Administrative Judge's findings, we are required to give deference to the Administrative Judge's credibility determinations. Directive ¶ E3.1.32.1.

In this case, the Administrative Judge made sustainable findings of fact that Applicant had experienced many problems with alcohol, to include three alcohol related offenses and regular consumption in relatively large amounts. The Judge made unchallenged findings that, while Applicant has received both outpatient and inpatient treatment for alcohol abuse, and has attended Alcoholics Anonymous, he continues to drink. The Judge stated, "While he admitted to being an alcoholic/addict, [Applicant] had not as yet embraced sobriety in his life."

The Judge also found that Applicant has routinely used marijuana and that he has less frequently used cocaine and

occasionally has used LSD. The Judge's finding that much of this drug use occurred while Applicant held a security clearance is unchallenged, as are the Judge's findings regarding Applicant's receipt of professional treatment for drug abuse in addition to the treatment he received concerning alcohol. Additionally, Applicant lost a job due to having failed a drug test.

Finally, the Judge made unchallenged findings that, both in 1992 and in 2002, Applicant made false statements on security clearance applications. These false statements included failures to list all of Applicant's arrests/convictions for alcohol offenses, failure to state the full extent of his drug use, and failure to state that he had been fired for drug abuse.

We conclude that the Judge's challenged findings are supported by substantial record evidence. We do note that, in his decretal paragraph, the Judge, after holding against Applicant under Guidelines G and E, states that he grants Applicant a clearance. However, viewed in light of the decision as a whole, this is clearly a typographical error and is, therefore, harmless.

Order

The decision of the Administrative Judge denying Applicant a clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

Michael Y. Ra'anan

Administrative Judge

Chairman, Appeal Board

Signed: William S. Fields

William S. Fields

Administrative Judge

Member, Appeal Board

Signed: James E. Moody

James E. Moody

Administrative Judge

Member, Appeal Board